

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>LINETTE CONNER</b>	)	
Claimant	)	
VS.	)	
	)	
<b>LOGAN MANOR COMMUNITY HEALTH</b>	)	Docket No. 222,623
Respondent	)	
AND	)	
	)	
<b>EMC INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appeals from the July 6, 1999, Award of Administrative Law Judge Bruce E. Moore. In the Award, the Administrative Law Judge found claimant entitled to a 71.5 percent work disability based upon a 43 percent loss of task performing ability and a 100 percent loss of wage earning ability. Respondent contends claimant should be limited to her functional impairment, because she allegedly refused accommodated work within her restrictions. Oral argument was held on November 16, 1999.

**APPEARANCES**

Claimant appeared by her attorney, Chris Miller of Lawrence, Kansas. Respondent and its insurance carrier appeared by their attorney, James M. McVay of Great Bend, Kansas. There were no other appearances.

**RECORD AND STIPULATIONS**

The record and stipulations set forth in the Award of the Administrative Law Judge are adopted by the Appeals Board.

In addition, the parties stipulate that the Appeals Board shall consider the depositions of Shirley M. Smith taken October 9, 1997, and Janice Lohrmeyer taken on October 9, 1997, from the case of Marva Jean Boyd v. Logan Manor Community Health and EMC Insurance Company, Docket No. 222,740, as part of this record.

**ISSUES**

- (1) What is the nature and extent of claimant's injury and/or disability?
- (2) Is claimant entitled to additional temporary total disability compensation for the period April 23, 1997, through September 28, 1998?

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary record filed herein, including the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

#### **FINDINGS OF FACT**

Claimant was a CNA in respondent's nursing home when she suffered an injury to her low back on April 18, 1996, while she and a coworker were transferring a resident. Claimant was seen in the emergency room that same day by Dr. Daryl Callahan, claimant's family physician. Claimant was treated conservatively but, when conservative treatment failed, claimant ultimately underwent surgery, including a laminectomy and discectomy at L4-L5 performed by Dr. E. Adeleke Badejo. Approximately two weeks after surgery, claimant began experiencing migraine headaches, with the first medically documented headache arising on August 30, 1996. Claimant denied having previous migraine headaches which interfered with her ability to work. However, respondent submitted personnel records indicating that claimant had missed work on several occasions prior to the date of accident due to migraine headaches, with these headaches beginning as early as October 1994.

Claimant underwent a short period of work hardening, followed by a functional capacities evaluation on December 30, 1996. The FCE indicated claimant was capable of working eight hours a day in a light to medium physical demand job. Initially, upon return to work, claimant was limited to two hours per day by Dr. Callahan, with the doctor intending that claimant would ultimately work up to full-time work. However, claimant returned to Dr. Callahan on several occasions complaining of substantial pain in the lumbar and cervical spines. Claimant had experienced cervical pain shortly after the injury but, by her own testimony, the cervical symptoms resolved three to four weeks after the surgery. Claimant worked light duty part-time through April 21, 1997, at which time she left work, alleging she was incapable of continuing employment due to her high levels of pain which she attributed to the headaches. Since leaving respondent's employment, claimant has applied at only four places, including Love's, Tom's Corner, Quality Corner and the postal service at Norton, Kansas, for which she was unqualified due to not having a high school diploma. Other than the above described attempts, claimant has sought no employment.

Dr. Callahan opined claimant had a 40 percent whole person functional impairment as a result of her work-related injuries, based upon the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition. As part of the functional impairment rating, Dr. Callahan included a condition known as cauda equina-like syndrome. This condition involves bilateral lower extremity permanent impairment with objectively demonstrated permanent partial loss of lower extremity function.

On cross-examination, Dr. Callahan acknowledged that claimant's primary problem was her left lower extremity and the symptoms were not bilaterally equal. Dr. Callahan testified that claimant experienced loss of use and atrophy in the right leg, but on cross-examination agreed he was unable to pinpoint in his records any indication of right leg atrophy.

On cross-examination, claimant acknowledged that, at the time she left respondent, it was due to her ongoing migraine headaches. Claimant was referred by the Administrative Law Judge for an independent medical examination with Dr. William Mallonee, a neurologist who specializes in treating patients with migraine headaches. Dr. Mallonee submitted claimant to both a CT scan of the brain and an MRI of the lumbar spine. He read the CT scan as being normal. Dr. Mallonee acknowledged that he does not do orthopedics and does not specialize in reading lumbar MRIs. He, therefore, provided no opinion regarding its findings. He did acknowledge that headaches can result from certain lumbar punctures, although he did not believe that was the case in claimant's situation. He acknowledged that, while claimant indicated the origins of her headaches seem at least temporarily to be related to the problems she had at work, he could not say that the injury caused her headaches. He went on to state that anatomically he could not relate claimant's headaches to her lumbar spine problems. His statement came after being told that claimant testified that her headaches began in her low back, traveled up her back, into her neck and shoulders, and ultimately into the head. From an anatomical and medical standpoint, he did not find this to make sense.

While claimant testified that she had had no prior history of migraine headaches, respondent's evidence indicated claimant had migraine headaches which caused her to miss work as early as 1994.

Dr. Mallonee went on to diagnose a psychological connection to claimant's headaches, including somatoform or chronic pain disorder, which he did not relate to claimant's work injuries.

He did recommend that claimant be examined by a clinical psychologist or psychiatrist in order to ascertain what, if any, involvement her psychological component had with her physical symptoms.

Claimant was referred by the Administrative Law Judge in September 1997 to William A. O'Connor, Ph.D., Associate Professor of Psychology at the University of

Missouri at Kansas City in Kansas City, Missouri. Dr. O'Connor submitted claimant to numerous psychological tests, including the State-Trait Anxiety Inventory, State-Trait Depression Objective Checklist, Brief Symptom Inventory, Shipley Institute of Living Scale test, the Hendler Chronic Pain Inventory test, and the MMPI-2. Following the tests, he concluded that claimant suffers from a much higher level of symptoms than would be expected, which suggested a tendency to somatize or exaggerate her level of pain. Dr. O'Connor stated claimant fit a conversion V profile, which he went on to describe as a person who presents himself or herself as being unable to function for physical reasons, but who goes on to deny the psychological component of the injury or pain symptoms. From a psychological standpoint, he expected claimant to magnify her symptoms. He stated it would not surprise him if she had similar headaches both before and after the injury, even though in her mind she could testify that the headaches started as a result of the injury. He said it was very common for people who have this type of somatic complaint profile to remember perfect health before a particular injury when, in fact, they may have suffered from very similar symptoms or problems prior to the injury. He stated in his opinion claimant's somatization disorder and chronic pain disorder preexisted claimant's work injury.

Claimant was referred in December 1998 by respondent to Dr. C. Reiff Brown, an orthopedic surgeon, at the request of respondent's attorney. Utilizing the AMA Guides, Fourth Edition, Dr. Brown assessed claimant a 10 percent whole body functional impairment. After reviewing the records of Dr. Callahan, Dr. Brown disputed Dr. Callahan's diagnosis of cauda equina. He found no evidence in the claimant's history, in the medical records or in his physical examination that claimant suffered from cauda equina syndrome.

Dr. Brown was provided a document titled "Work Task Requirements for CNA at Logan Manor," which was Exhibit C to his deposition. This job task description involved the work tasks required for a CNA at respondent's facility. He felt that claimant should be able to perform all of the tasks listed in Exhibit C. He did note that certain tasks required lifting of up to 75 pounds but, according to the task description, the 75-pound lifting was being shared by two people. Any lifting above 50 pounds for an individual would require utilization of a mechanical lifting device.

Dr. Brown was asked whether he found any evidence of symptom magnification or exaggeration on claimant's part. He testified that he did not believe claimant was exaggerating her symptoms, as he found no indication of symptom exaggeration during his examination. Dr. O'Connor had earlier testified that claimant's symptoms were not willfully exaggerated or created, but actually existed in claimant's mind.

On March 4, 1997, claimant returned to work at light duty, two hours per day. By April 20, 1997, claimant had left work due to her severe migraine headaches. Respondent's representative, Janice Lohrmeyer, office manager, testified that respondent was willing and able to accommodate claimant's job restrictions, including the lifting limitations. The job offered to claimant in March 1997 was an accommodated, full-time,

eight-hour-per-day, 40-hour-per-week position. Claimant would remain on light duty until a physician stated she could return to normal CNA duties. At oral argument to the Board, respondent's attorney acknowledged accommodated full-time work was available to claimant at all times.

#### CONCLUSIONS OF LAW

In proceedings under the Workers Compensation Act, it is claimant's burden to establish her right to an award of compensation by proving the various conditions upon which claimant's right depends by a preponderance of the credible evidence. See K.S.A. 1996 Supp. 44-501 and K.S.A. 1996 Supp. 44-508(g).

The Appeals Board must first consider whether claimant's migraine headaches are related to her work injuries of April 18, 1996. While Dr. Callahan testified that he believed the headaches were in some way related to the low back and neck injuries, the Appeals Board does not find his testimony credible. Claimant acknowledged that the neck pain stopped three to four weeks after the back surgery. In addition, Dr. Mallonee, a neurologist specializing in migraine headaches, testified that there was no connection between the headaches and the work-related injuries suffered by claimant with respondent. He could not explain, from an anatomical standpoint, the migration of the pain from claimant's low back up into her head. The Appeals Board finds claimant's migraine headaches to be unrelated to claimant's injuries of April 18, 1996.

Two doctors' opinions were provided regarding what, if any, functional impairment claimant suffered from the accident. Dr. Callahan rated claimant at 40 percent to the body as a whole, rating not only the lumbosacral injury and surgery, but also a cauda equina syndrome involving loss of use of both lower extremities. Dr. Brown assessed claimant a 10 percent whole body functional impairment, disputing Dr. Callahan's diagnosis of cauda equina-like syndrome. Dr. Brown testified that the bilateral extremity symptoms discussed by Dr. Callahan were not present. In addition, during cross-examination, Dr. Callahan was unable to verify a finding of atrophy in the claimant's right lower extremity. Cauda equina syndrome requires that a patient suffer bilateral lower extremity limitations. This is not supported by the medical records. The Appeals Board, therefore, finds Dr. Brown's rating of 10 percent to the body as a whole to be the most credible.

The Administrative Law Judge noted in the Award that both parties referred to the Fourth Edition of the AMA Guides, which he stated would be inappropriate under the circumstances. However, K.S.A. 1996 Supp. 44-510e, which obligates the use of the American Medical Association Guides to Permanent Impairment, was amended and became effective on April 4, 1996, fourteen days prior to claimant's date of accident. That amendment obligates that the Fourth Edition be utilized thereafter in establishing functional impairment. Therefore, the use of the Fourth Edition by both Dr. Callahan and Dr. Brown was proper.

K.S.A. 1996 Supp. 44-510e defines the extent of permanent partial general disability as:

. . . the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury.

With regard to the nature and extent of injury and/or disability, the Appeals Board must first consider respondent's contention that claimant has violated the policies set forth in Foult v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), *rev. denied* 257 Kan. 1091 (1995). In Foult, the Kansas Court of Appeals held that the Workers Compensation Act in Kansas should not be construed to award benefits to a worker solely for refusing a proper job that the worker has the ability to perform. In this instance, claimant returned to work with respondent at a light duty job which would have accommodated the restrictions placed upon claimant by Dr. Callahan or Dr. Brown. Claimant refused to continue working the job which, by claimant's own admission, was solely due to the migraine headaches. The record establishes claimant's migraine headaches are not related to her work-related injury. Respondent presented throughout this litigation that accommodated work within her restrictions was available to claimant. Claimant has not accepted this accommodated work.

In addition, respondent argues claimant has violated the policies set forth in Copeland v. Johnson Group, Inc., 24 Kan. App. 2d 306, 944 P.2d 179 (1997). In Copeland, the Court of Appeals held that, if a claimant, post-injury, does not put forth a good faith effort to obtain employment, then the trier of facts is obligated to impute a wage based upon the evidence in the record as to claimant's wage-earning ability. The Appeals Board here finds claimant was physically capable of returning to work at the accommodated position offered by respondent. The Board further finds that claimant's four contacts after leaving respondent's employment do not constitute a good faith effort to find employment. Therefore, based upon the policies found in Copeland, the Appeals Board will impute a wage to claimant post-injury. As the job offered by respondent would have paid a comparable wage to that being earned by claimant at the time of the injury, the Appeals Board finds under K.S.A. 1996 Supp. 44-510e that claimant is limited to her functional impairment of 10 percent.

Claimant further argues entitlement to temporary total disability benefits from April 23, 1997, to September 28, 1998. As noted by the Administrative Law Judge, claimant's absence from work during this time stems from her migraine headaches which have been found to be non-work-related. Therefore, claimant's entitlement to temporary total disability benefits during this period is denied.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bruce E. Moore dated July 6, 1999, should be, and is hereby, modified, and claimant, Linette Conner, is granted an award against the respondent, Logan Manor Community Health, and its insurance carrier, EMC Insurance Company, for an injury occurring on April 18, 1996, and based upon an average weekly wage of \$285.73, for a 10 percent permanent partial disability to the body as a whole.

Claimant is entitled to 49.65 weeks temporary total disability compensation at the rate of \$190.50 per week in the amount of \$9,458.33, followed thereafter by 38.04 weeks permanent partial disability compensation at the rate of \$190.50 per week in the amount of \$7,246.62, for a total award of \$16,704.95. As of the time of this award, the entire amount would be due and owing in one lump sum minus any amounts previously paid.

In all other regards, the Award of the Administrative Law Judge is affirmed insofar as it does not contradict the orders contained herein.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1999.

---

BOARD MEMBER

---

BOARD MEMBER

---

BOARD MEMBER

c: Chris Miller, Lawrence, KS  
James M. McVay, Great Bend, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director